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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1960

No. 325

ELI FRIEDLANDER, BERTHA A. LLOYD, CARL F. LLOYD, JAMES J. PRINCE and BERNARD F. VAN HARREN, d/b/a LLOYD'S PROPERTY OWNERS ASSOCIATION OF CHICAGO and LLOYD REALTY COMPANY,

Petitioners,

vs.

THE CHICAGO BAR ASSOCIATION, an Illinois Corporation, not for profit, STUART C. ABBEY, MANDEL L. ANIXTER, DAVIS P. BUZANE, RICHARD L. KAHN, JOHN LIGTENBERG, JOHN T. LOVE, JOHN CADWALADER MENK, JAMES T. MULLANEY, CURTIS F. PRANGLEY, and JOHN A. WATSON,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now John Ligtenberg, as attorney and solicitor for the respondents (himself included) and says that a writ of certiorari should not be granted for the following reasons:

1. There is no special or important reason therefore, as required by Rule 19 of this Court.

2. The petitioners in the Court below raised no question under the Federal Constitution and the matters there presented were not within the contemplation of Rule 19.

It shall be our purpose to support these two propositions as concisely as possible.

1. The Proceedings Below.

This case originated in the Superior Court of Cook County, Illinois, a court of general original jurisdiction. The plaintiffs, the Chicago Bar Association, and certain members of the Committee on Unauthorized Practice of that association commenced a chancery action seeking to enjoin the defendants (who are the petitioners here) from doing certain acts alleged to be the unauthorized practice of law. These acts were essentially the representation of property owners in four kinds of proceedings:

(1) Condemnation proceedings,
(2) Special Assessment proceedings,
(3) Tax Rate proceedings, and
(4) Proceedings relating to the valuation of real estate for tax purposes.

The petitioners were actively engaged in these matters though they were not licensed to practice law. They solicited property owners to employ them in such matters mostly on a contingent fee basis, claiming long and successful experience (Abst. 1-32), and that they employed a staff of real estate experts, appraisers and attorneys to assist them where necessary.

The amended answer denied that the defendants did anything that amounted to the practice of law but described their activities in considerable detail. They also pleaded that they were protected by an unreported 1934 decision

of the Illinois Supreme Court, which is described in detail in the petition for writ of certiorari, pp. 6-8.

However, the amended answer raises no state or federal constitutional question and no Federal question in any form (Abst. 33-59).

The cause was heard and determined on the motion of plaintiffs to strike the amended answer and a decree for a permanent injunction was entered.

An appeal was then taken to the Illinois Appellate Court, a tribunal which has no jurisdiction of constitutional questions. Had the petitioners raised a question under the State or Federal Constitution their appeal would have lain direct to the Supreme Court of Illinois. Illinois Civil Practice Act, Section 75. Ill. Rev. St. (State Bar Ed.) 1959, Chapter 110, Section 75, which in part follows:

> "(1) Appeals shall be taken directly to the Supreme Court (a) in all cases in which * * * a construction of the constitution is involved."

The opinion of the Illinois Appellate Court, 24 Ill. App. 2nd 130, affirmed the decree below and mentioned no Federal question.

The petition for leave to appeal to the Supreme Court of Illinois was denied May 23, 1960, without opinion. The petition itself raised only state questions. These were:

1. That the decree conflicts with earlier decisions of the Illinois Supreme Court, including the so-called first Lloyd's case.
2. The defendants were not guilty of the unauthorized practice of law.
3. The opinion and decree below allow discrimination between adversaries.
4. The Appellate Court ignored the principles of *Res Judicata*, Estoppel by Judgment and *Stare Decisis*.

An inspection of the entire proceedings in the courts of Illinois does not disclose that any Federal question was raised at any time. The entire case was obviously conducted on the theory that no constitutional question, state or federal, was involved.

2. The Activities of Petitioners.

Since the above may not disclose adequately the nature of the activities enjoined by the decree we quote here a summary statement adopted by the Appellate Court of Illinois. The statement is changed only by paragraphing it for easier reading. Its source is the opinion of the trial court chancellor (Abst. 63-65). *'Chicago Bar Association et al* v. *Friedlander*, 24 Ill. App. 2nd, 130:

> "Defendants conduct their operations as 'Lloyd's Property Owners Association of Chicago' and 'Lloyd's Realty Company'. The acts complained of relate to their representation of property owners in (1) condemnation proceedings, (2) special assessment proceedings, (3) tax rate proceedings, and (4) proceedings relating to the valuation of real estate for tax purposes.
>
> "Defendants solicit property owners to employ them to represent such owners in condemnation proceedings. In the course of this solicitation, defendants claim long and successful experience in the handling of such matters and state that 'We have a staff of real estate experts and appraisers who know this type of work and also attorneys with long experience in condemnation cases.' When the solicitation is successful, defendants contract to represent the property owners for 25% of any sum obtained over and above the initial offer. In this contract, the property owner authorizes defendants to select an attorney for him (at an additional expense); 'If it is necessary to have an attorney's services and I do not select an attorney.' Defendants engage real estate experts, engineers and construction experts at their own expense to assist them in their efforts. 'Where only questions of valu-

ation were involved', defendants proceed to negotiate for condemnation awards without the services of an attorney. If their own negotiations are satisfactory, an attorney is employed merely for the purpose of filing the owner's appearance; otherwise the attorney works with defendants in further negotiations and proceeds to try the case if necessary. Through attorneys retained and employed by them, defendants cause appearances, answers and objections to be filed in courts of record. While it is claimed that such attorneys are 'acting as attorney or attorneys for property owners and not as attorney or attorneys, employee or employees, of these defendants', it appears that only one licensed attorney has been employed by defendants in recent years to represent all property owners involved in condemnation matters.

"The practices followed by defendants in assessment matters parallel their operations with respect to condemnation cases: solicitation based on a claim of long and successful experience; a contingent fee contract authorizing defendants to select an attorney for the property owners; the employment of engineers or real estate experts by defendants at their own expense; the employment of an attorney (at an added expense to the property owner) to file and prosecute objections to the assessment. Again it appears that in recent years only two licensed attorneys have been employed by defendants to represent all property owners in special assessment matters.

"With respect to the contesting of tax rates, defendants circularize and solicit substantially all of the property owners whose names they have accumulated over the years and enter into contingent fee contracts of employment to arrange for the payment of taxes under protest and to file and present objections to the tax rate. They file a letter of protest prepared by their attorney, on behalf of such property owners, and employ an attorney to file and prosecute objections to the rates on behalf of such owners.

"Defendants' operations with reference to valuation of property for tax purposes are substantially the same as in the other three fields.

"Defendants have emphasized that their services relate to questions of valuation only, are confined to preparatory work, and that they do not appear in court. Certainly the practice of law is not confined to the courtroom. Nor can defendants take refuge in the fact that their work may be said to be preparatory in nature. The fact is that all of their operations were in connection with matters that ultimately lead to court proceedings or proceedings before an administrative body. Their letters of solicitation make it perfectly clear that their services include those to be performed by an attorney. The preparation of cases for trial and negotiation directed to out-of-court settlements are an integral part of the typical lawyer's work."

3. Scope of the Petition For Writ of Certiorari.

Of the four types of activities enjoined by the decree below this petition relates only to the last:

> Proceedings relating to the valuation of real estate for tax purposes.

The petitioners have apparently acquiesced as to the other three, or have now consented that these activities amounted to the practice of law. The basis of their contention seems to be that tax valuation matters are handled in non-judicial proceedings and that the courts of Illinois erred in finding that appearance in real estate valuation cases constitutes the practice of law. This seems to the respondents palpably and solely a state question.

The petition for certiorari (page 7) states that the issues in the first Lloyd's case "*were in all pertinent respects identical* with the charges made in the present case." (The emphasis is theirs). It seems inconsistent for them to

admit now that the 1934 decision of the Illinois Supreme Court does not protect them with respect to condemnation, special assessment and tax rate matters but may still shield them in valuation cases. Do they admit by this that the Illinois courts are competent to decide that some things are the practice of law but that they are incompetent as to others?

4. The Question of Jurisdiction.

Jurisdiction of this Court is claimed on the basis of Title 28, USCA Section 1257 (3).

5. Questions Presented.

(1) Has the petitioner raised any right, title, privilege or immunity under the United States Constitution?

(2) If a federal question is involved, has it been raised in a timely manner, if presented in this court for the first time?

(3) Will the Supreme Court of the United States take jurisdiction of a decree involving a question solely and peculiarly of state law?

ARGUMENT.

I.

The petitioner has not set up any right, title, privilege or immunity under the Federal Constitution.

Nowhere in the proceedings in any of the Illinois State courts did the petitioners contend that any part of the Federal Constitution had been violated.

The Judicial Code, USCA, Title 28, Section 1257 (3), provides that it shall be competent for the Supreme Court of the United States by certiorari to certify for review any final judgment or decree of the highest court of a state court, where "any title, right, privilege or immunity is specially set up or claimed under the constitution * * *" Since no such right is set up or claimed, there is nothing for this Court to review.

It is significant that the petitioners do not argue specifically in their petition for certiorari that their activities are not the practice of law. While they sometimes call their activities a "business" (Petition p. 12) they find themselves unable to describe their activities without using words and phrases peculiar to the practice of law.

On page 11 they speak of their right to practice. On page 12 they mention "351 separate hearings conducted by them", "rules of procedure", "clients", and "representation". On page 13 they expand upon their "knowledge of state taxation", surely an extremely complicated legal subject. These are merely a few examples plucked from their argument.

They rely solely on the 1934 opinion of the Illinois Supreme Court that their "business" in tax valuation cases

is not the practice of law. Inconsistently, they apparently concede that the earlier opinion was wrong about the other phases of their business. They have not ventured to explain why the decree enjoining them from practicing in condemnation, special assessment and tax rate matters presented only a state question while the injunction against their tax valuation work did present a Federal question.

As a matter of law, the entire decree, including the portion here attacked is based on adequate state grounds. This Court has refused jurisdiction where the decision of the state court is referable to readily available and adequate state grounds. *Durley* v. *Mayo*, Fla. 1956. 76 S. Ct. 806, 351 U.S. 277, 100 L. Ed. 1178, re-hearing denied 77 St. Ct. 22, 352 U. S. 859, 1 L. Ed. 2nd 69.

It has always been conceded that the practice of law and what constitutes such practice is peculiarly a state question. In *Mitchell* v. *Greenough*, 100 F. 2d 184, the Court said (p. 185):

> "We pause here to observe that the right to practice law in the state court has been held by the Supreme Court not to be a privilege granted by the Federal Constitution or laws. *Bradwell* v. *State of Illinois*, 16 Wall. 130, 21 L. Ed. 442; *Ex parte Lockwood*, 154 U.S. 116, 14 S. Ct. 1082, 38 L. Ed. 929. In *Green* v. *Elbert*, 8 Cir., 63 F. 308, the Circuit Court of Appeals held that the conspiracy to deprive a lawyer of his right to practice law in the state courts was not a conspiracy to interfere with any right or privilege 'granted, secured or protected by the Constitution of the United States.'"

In *Central Land Company* v. *Laidley*, 159 U. S. 103, this Court said (p. 112):

> "When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of

law, within the Fourteenth Amendment of the Constitution of the United States."

It is apparent from the opinion of the Illinois Appellate Court in this case, 24 Ill. App. 2nd 130, Appendix A of Petition, that the decree for injunction, as applied to practice before the board of tax appeals in valuation cases, is well within the frame work of Illinois case law on the subject. The many cases cited by the Appellate Court constitute the leading body of law in the United States on the subject of unauthorized practice.

There can be no property right in the practice of law. No layman can gain a vested right to practice. This statement is not contradicted by *Schware* v. *Board of Bar Examiners*, 353 U. S. 232, or *Konigsburg* v. *State Bar of California*, 353 U. S. 252.

At any rate these cases do not apply here because petitioners do not claim the right to practice law, but on the contrary claim their work is not such practice.

The fallacy of petitioners is simply this: The practice of law is not a business. A license to practice law is not a property right; it is a privilege. Even if it be said that the privilege was extended to the respondents in the first Lloyd's case in 1934, the Illinois Supreme Court has never given any such privilege to the petitioners. The right to practice law cannot be inherited or assigned. There is, by definition, no property right in a privilege. *People* v. *Chicago Motor Club*, 362 Ill. 50; *People* v. *People's Stockyards Bank*, 344 Ill. 462.

These Illinois holdings are fully sustained by the pronouncements of this Court. In *In re Isserman*, 345 U. S. 286, this court said:

> "There is no vested right in an individual to practice law. Rather there is a right in the Court to pro-

tect itself, and hence society, as an instrument of justice."

Even in disbarment cases, this court has found no issue of Federal due process, apparently on the basis that state procedures were adequate. *Selling* v. *Radford*, 243 U. S. 46; *McCallum* v. *Board of Managers of Chicago Bar Association*, 326 U. S. 689; *Ex Parte Wall*, 107 U. S. 265; *People ex rel Chicago Bar Association* v. *Tinkoff*, 399 Ill. 282, certiorari denied 334 U. S. 833; *Tinkoff* v. *United States*, 212 Fed. 2nd 18.

It would seem to be beyond dispute that no real substantial Federal question has been presented by the petitioners.

II.

Even if there is a Federal question in the case it has not been raised in a timely manner or in such a way that it will be considered by this Court.

An inspection of the record shows that the petitioner in the court below raised no question under the federal constitution. The amended answer to the complaint in the trial court is completely devoid of any tender of an issue involving the federal constitution. No federal question was raised or even hinted at in the Appellate and Supreme Court of Illinois. Had any constitutional question been present, petitioner could have appealed direct to the Supreme Court of Illinois, hence it is obvious that the raising of a federal question here is an after-thought.

In order to meet the jurisdictional requirement of this Court, petitioners in their argument (Page 14 of the Petition) suggest that Res Judicata is a principle of law which is part of due process, and litigants are entitled to have it recognized, whatever that statement means. It is not clear

whether petitioners are suggesting that Res Judicata is a different kind of defense to that of any other kind, such as the Statute of Limitations or payment, which would make this defense so privileged under the Constitution of the United States, that an erroneous refusal to recognize it would *ipso facto;* give this court jurisdiction. Petitioners cite no authority to support this unusual legal proposition, nor, in our opinion, can they. They then proceed to argue that if this defense, as opposed to any other kind of defense, is interposed in a trial court and is overruled, which action is subsequently sustained by the Appellate and Supreme Courts in the State of Illinois, this, for the first time, raises a constitutional question. There is nothing unique or different about the plea or defense of Res Judicata which permits of this construction. The statement of the Supreme Court of Illinois in *In Re Paus' Estate*, 385 Ill. 550, seems particularly appropriate:

> "We have repeatedly stated that the Constitution does not guarantee that the courts shall not commit error in the trial of causes, and is not a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter. If errors are committed, or erroneous decisions rendered, they may be corrected in the manner provided by law for the correction of such errors, but mere errors in a judgment or decree do not deprive the losing party of due process of law. *McIlvaine* v. *City Nat. Bank & Trust Co.*, 371 Ill. 565, 21 N.E. 2d 737; *Foreman-State Nat. Bank* v. *Sistek*, 358 Ill. 525, 193 N.E. 513. A constitutional question is not involved, so as to give this court jurisdiction of a direct appeal, where the judgment or decree is assailed on the ground that its enforcement will deprive the person against whom enforcement is sought, of his property without due process of law. The question in such case is the validity of the judgment or decree and not the constitutional question. * * *

> "It is the duty of this court to determine whether it has jurisdiction, but the growing practice of bringing cases directly to this court upon the pretense that a constitutional question is involved, when the only matter in controversy is that the trial court has rendered an unjust or erroneous decision, is not approved."

The petitioner cannot raise federal questions here when he did not raise them in the Supreme Court of Illinois. *Hulbert* v. *Chicago*, 202 U.S. 275, 50 L. ed. 1026. It may be suggested that *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 is a case where the federal question was raised for the first time in this court. However, in this case the Supreme Court of New Mexico was the court of original jurisdiction and its judgment denying a license to practice law was the point at which a federal question arose.

In *Konigsburg* v. *State Bar of California*, 353 U.S. 252, the federal question was raised in the Supreme Court of California which was the case of original jurisdiction.

There is no reason in law for permitting the petitioners to come into this court on a federal question which is purely an afterthought and in addition has no substantial foundation.

III.

The Supreme Court of the United States will not take jurisdiction of a State Decree involving a question solely and peculiarly of State Law.

The decisions of the courts of review of the State of Illinois on the unauthorized practice of law have been consistent, unequivocal and firm. They comprise the leading body of law in this country on this subject. They indicate that the courts of Illinois have taken a stand in the interest of the public as well as the profession.

The ~~respondents~~ petitioners seek to take refuge in the fact that the practice in tax valuation cases is before an administrative tribunal and that such practice does not amount to the practice of law. However, the Supreme Court of Illinois has long ago taken a position on this question and this stand has been consistently followed since.

In *People ex rel. Chicago Bar Assn.* v. *Goodman*, 366 Ill. 346, the Illinois Supreme Court held (p. 352):

> "It is urged that the practice by the respondent before the Industrial Commission is before an administrative body, and that the respondent, therefore, is not practicing law because he is not before a court. * * * It is elementary that a great portion of the present day practice of law is conducted outside the court room. The respondent urges that because the legislative act relating to the Industrial Commission grants to that body the right to promulgate rules governing the procedure before it, and the commission has adopted a rule permitting a party to appear before it by his attorney or 'agent,' that he, as agent of the claimant, may lawfully appear before the commission as the representative of the client and try his claim there. Even though the Industrial Commission is merely an administrative body, yet, if what the respondent did for a fee, in the presentation of and hearing of a petitioner's claim before that body, amounted to the practice of law, a rule of the commission purporting to grant him that privilege is of no avail to him. The General Assembly has no authority to grant a layman the right to practice law. (*In re Day, supra.*) It follows that any rule adopted by the commission, purporting to bestow such privilege upon one not a duly licensed attorney at law, is void. Nor can the General Assembly lawfully declare not to be the practice of law, those activities the performance of which the judicial department may determine is the practice of law."

The case of *Chicago Bar Assn.* v. *United Taxpayers of America, et al.*, 312 Ill. App. 243, also covers practice before an administrative body, *i.e.*, the Department of Finance.

Illinois courts of review have condemned the practice of law by collection agencies (*Midland Credit Adjustment Co., et al.* v. *Donnelley*, 219 Ill. App. 271; *People* v. *Securities Discount Corp.*, 279 Ill. App. 70, affirmed, 361 Ill. 551; *Smith* v. *Illinois Adjustment Finance Co.*, 326 Ill. App. 654), practices by individuals covering real estate and allied transactions (*People ex rel. Illinois State Bar Assn. and Chicago Bar Assn.* v. *Schafer*, 404 Ill. 45; *People ex rel. Chicago Bar Assn., et al.* v. *Tinkoff*, 399 Ill. 382), the practice of law by a patent agent (*Chicago Bar Assn., et al.* v. *Kellogg*, 338 Ill. App. 618), as well as that of banks (*People ex rel. Illinois State Bar Assn., et al.* v. *People's Stock Yards Bank*, 344 Ill. 462), and motor clubs (*People ex rel. Chicago Bar Assn.* v. *Chicago Motor Club*, 362 Ill. 59; *People ex rel. Chicago Bar Assn.* v. *The Motorists Assn. of Illinois*, 354 Ill. 595).

The principles as laid down in those cases permit of no exception here.

The mere fact that a state court has rendered an erroneous decision on a question of state law, moreover, or has overruled principles or doctrines established by previous decisions on which a party relied does not give rise to a claim under the Fourteenth Amendment or otherwise confer jurisdiction on this court because of the presence of a federal question. *Brinkerhoff* v. *Hill*, 281 U.S. 673, 680.

In the case of *Sunray Oil Co.* v. *Commissioner of Internal Revenue*, 147 Fed. 2d 962, it was held that there is no vested right in the decisions of a court and a change of

decision does not deprive a litigant of the equal protection of laws or take his property without due process of law. A federal question is not raised because a court overruled a prior decision. Certiorari was denied by this court *Sunray* v. *Comm'r of Internal Revenue*, 325 U.S. 861.

From these authorities it is apparent that the decree below was well within the established body of Illinois case law, making the activities of the respondents clearly and palpably the unauthorized practice of law. The permanent injunction decreed by the state court was easily predictable. The respondents were accorded a full and extended hearing and "due process" was abundantly accorded to them.

CONCLUSION.

We accordingly submit that this case presents no federal question of which this court will take notice, and that certiorari should be denied.

Respectfully submitted,

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